

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOANNE RODRIGUES,

Plaintiff,

v.

ALLIANT CREDIT UNION,

Defendant.

Case No. [21-cv-01111-DMR](#)

**ORDER DENYING MOTION FOR
ATTORNEYS' FEES**

Re: Dkt. No. 119

In this diversity jurisdiction lawsuit, self-represented Plaintiff Joanne Rodrigues sued Defendant Alliant Credit Union (“Alliant”) alleging that it violated its membership and account agreement. On November 7, 2022, the court granted Alliant’s motion for summary judgment. [Docket No. 113.] Alliant now moves for attorneys’ fees. [Docket Nos. 119 (“Mot.”), 124 (“Reply”).] Rodrigues opposes.¹ [Docket No. 121 (“Opp’n”).] The court finds that this matter is appropriate for resolution without oral argument. N.D. Cal. Civ. L.R. 7-1(b). For the following reasons, the motion is denied.

I. BACKGROUND

The factual background is set forth in full in the court’s order granting Alliant’s motion for summary judgment. [Docket No. 113.] In short, Rodrigues filed this lawsuit against Alliant asserting that it violated its 2019 Membership and Account Agreement when it froze access to her bank accounts as part of her divorce proceedings. [See Docket No. 107-2 at 1 (“Account Agreement”).] Rodrigues alleged claims for breach of contract, negligence, conversion, violations of California Financial Code § 1450 and the California Unfair Competition Law, and a claim for declaratory relief. On December 17, 2021, Rodrigues filed an amended complaint alleging a

¹ The court has also reviewed both parties’ notices of errata. [Docket Nos. 125, 126.]

seventh claim for relief under the Truth in Savings Act and its implementing regulations. [Docket No. 47 (First Amended Complaint (“FAC”)).] Alliant moved for summary judgment on September 8, 2022. [Docket No. 102.] On November 7, 2022, the court granted Alliant’s motion and directed that the case be closed. [Docket No. 113.]

Alliant now moves for attorneys’ fees pursuant to California Code of Civil Procedure §§ 1717 and 1021.

II. LEGAL STANDARDS

“Under the American rule, as a general proposition each party must pay [their] own attorney fees. This concept is embodied in section 1021 of the Code of Civil Procedure, which provides that each party is to bear [their] own attorney fees unless a statute or the agreement of the parties provides otherwise.” *Gray v. Don Miller & Assocs., Inc.*, 35 Cal. 3d 498, 504 (1984); Cal. Code Civ. Proc. § 1021 (“Except as attorney’s fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties[.]”).

A prevailing party in an action may only recover attorneys’ fees as costs if a statute, contract, or California law authorizes the recovery of those fees. Cal. Code Civ. Proc. § 1032(b) (“Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.”); Cal. Code Civ. Proc. § 1033.5(a)(10) (explaining that attorneys’ fees are “allowable as costs under Section 1032” “when authorized by any of the following: (A) Contract. (B) Statute. (C) Law.”).

III. DISCUSSION

As the prevailing party, Alliant seeks attorneys’ fees incurred in defending this action. Mot. at 1. Alliant contends that attorneys’ fees are authorized by two sections of the Account

Agreement.² *See* Mot. at 1-2, 4. Rodrigues disputes this.³ Opp’n at 4-5.

Alliant seeks fees under Sections 13 (“Arbitration Agreement”) and 26 (“Enforcement”), which provide:

13. If any legal action is brought against your account, we may pay out funds according to the terms of the action or court order, or refuse any payout until the dispute is resolved. Any expenses or attorney fees we incur responding to legal process may be charged against your account without notice, unless prohibited by law. Any legal process against your account is subject to our lien and security interest.

26. You are liable to us for any loss, cost or expense we incur resulting from your failure to follow this Agreement. You authorize us to deduct any such loss, costs or expenses from your account with prior notice to you. If we bring a legal action to collect any amount due under or to enforce this Agreement, we shall be entitled, subject to applicable law, to payment of reasonable attorney’s fees and costs, including fees on any appeal, bankruptcy proceedings, and any post judgment collection actions.

Account Agreement §§ 13 (“Arbitration Agreement”), 26 (“Enforcement”).

With respect to Section 13, Alliant specifically relies on the following words: “[a]ny expenses or attorney fees we incur responding to legal process may be charged against your account without notice, unless prohibited by law. Any legal process against your account is subject to our lien and security interest.” Reply at 4 (citing Account Agreement § 13).

Alliant’s argument misleadingly highlights the second sentence of Section 13 while ignoring the first, which makes clear that the provision only applies “if any legal action is brought against your account.” *See* Reply at 4, 5 n.2. A plain reading of Section 13 does not support Alliant’s interpretation. Here, Rodrigues initiated the action against Alliant for blocking access to

² Alliant states that the First Amended Complaint sought to recover attorneys’ fees “as permitted by law or contract.” Mot. at 4 (citing Docket No. 48 at 10). It argues that Rodrigues’ prayer for relief impliedly recognizes that the Account Agreement entitles Alliant to attorneys’ fees for defending this action. *See* Reply at 5. Alliant cites no authority to support its argument that Rodrigues’ complaint should be construed to support Alliant’s claim for contractual fees.

³ Rodrigues makes several arguments unrelated to Alliant’s asserted contractual entitlement to fees. For example, Rodrigues contends that Alliant failed to meet and confer in good faith regarding this motion and that equity considerations weigh against awarding attorneys’ fees based on her status as a self-represented litigant. *See* Opp’n at 4, 5-6. As the court finds that Alliant is not entitled to attorneys’ fees under the Account Agreement, it need not reach these additional arguments.

her account. Alliant does not argue, nor does the record support, that Rodrigues brought the action “against” her account. Alliant further contends that the fee provision “broadly appl[ies] to all of the claims Plaintiff made and lost” without explanation or citation to authority. *See* Reply at 4. Where, as here, “the language [of a contract] is clear and explicit, and does not involve an absurdity,” the language of the contract itself “is to govern its interpretation.” Cal. Civ. Code § 1638. As Section 13 involves legal action brought against a member’s account, the provision is inapposite on its face.⁴

Alliant’s contention that it is entitled to attorneys’ fees under Section 26 of the Account Agreement fails for similar reasons. Section 26 applies where “we [Alliant] bring a legal action to collect any amount due under or to enforce” the Account Agreement. Account Agreement § 26. Here, Alliant did not bring a legal action, and has not attempted to enforce Rodrigues’ obligations under the Account Agreement. Rodrigues brought this action to enforce *Alliant’s* contractual obligations. The express terms of Section 26 do not apply.

Alliant insists that it is nevertheless entitled to attorneys’ fees under Sections 13 and 26 of the Account Agreement pursuant to California Civil Code § 1717. That section “ensure[s] mutuality of remedy for attorney fee claims under contractual attorney fee provisions” in two ways. *Santisas v. Goodin*, 17 Cal. 4th 599, 610 (1998). First, it renders a unilateral fee-shifting provision mutual. *Id.* Second, it awards fees to a party who is sued on a contract and who defends the litigation by successfully arguing the inapplicability, invalidity, unenforceability, or nonexistence of the same contract. *Id.*; *see also Roy Allen Slurry Seal v. Laborers Int’l Union of N. Am. Highway & St. Stripers/Rd. & St. Slurry Loc. Union 1184, AFL-CIO*, 241 F.3d 1142, 1145 n.3 (9th Cir. 2001). Section 1717 applies where (1) the action in which the fees are incurred arises from a contract; (2) the contract contains a provision stating that attorneys’ fees incurred to enforce the contract shall be awarded to one of the parties or to the prevailing party; and (3) the

⁴ Alliant insists that although Section 13 is located under the heading “Arbitration Agreement,” it nevertheless applies to all types of proceedings. Reply at 5. In support, Alliant points to the “Severability” section of the agreement, which states that “all headings are intended for reference only and are not to be construed as part of the agreement.” *Id.* (citing Account Agreement § 25). The court does not need to reach this argument because the language of Section 13 does not apply to this case, regardless of the heading.

1 party seeking fees is the prevailing party in the contract dispute. *Penrod v. AmeriCredit Fin.*
 2 *Servs. (In re Penrod)*, 802 F.3d 1084, 1087-88 (9th Cir. 2015). However, even where section
 3 1717's three conditions are met, a party may only recover its attorneys' fees "provided that [the
 4 party opposing the request for attorneys' fees] would have been entitled to recover its fees had it
 5 prevailed." *In re Penrod*, 802 F.3d at 1088 (citation omitted).

6 Alliant's briefing is opaque and unhelpful. It is not clear what effect, if any, Alliant
 7 contends California Civil Code § 1717 has on Sections 13 and 26 of the Account Agreement
 8 because Alliant does not develop any substantive argument in connection with section 1717,
 9 leaving the court to guess. *See* Mot. at 2; Reply at 3, 5. As best as the court can tell, Alliant
 10 argues that it has established the conditions set forth by the Ninth Circuit in *In re Penrod*—
 11 notably, that the instant dispute constitutes an action "on a contract" and that Alliant is the
 12 prevailing party. *See, e.g.*, Mot. at 4 ("Here, it cannot reasonably be disputed that the Agreement
 13 is a contract, and Plaintiff has admitted that the instant action arose out of the Agreement."); Reply
 14 at 3 ("Plaintiff does not dispute that Alliant is the prevailing party."). These arguments do not
 15 explain how California Civil Code § 1717 serves to broaden Sections 13 and 26 of the Account
 16 Agreement.

17 Alliant also argues in passing that "Plaintiff's arguments over the if-then clause of the
 18 enforcement provision" is "flawed given the law on reciprocity." Reply at 5. Alliant does not
 19 provide any explanation in support of this argument or for its bare citation in a footnote to
 20 California Civil Code § 1717(a) and *Roy Allen Slurry Seal v. Laborers Int'l Union of N. Am.*
 21 *Highway & St. Stripers/Rd. & St. Slurry Loc. Union 1184*, *AFL-CIO*, 241 F.3d 1142, 1145 n.3 (9th
 22 Cir. 2001). *See* Reply at 5, n.2. To the extent Alliant contends that California Civil Code § 1717
 23 broadens Section 26 in a way that would make it applicable in this case, that argument is
 24 unpersuasive. As previously noted, a party may only recover its attorneys' fees "provided that
 25 [the party opposing the request for attorneys' fees] would have been entitled to recover its fees had
 26 it prevailed." *In re Penrod*, 802 F.3d at 1088 (citation omitted). Here, neither Section 13 nor 26
 27 allow Rodrigues to recover attorneys' fees.

28 Accordingly, Alliant is not entitled to attorneys' fees incurred in defending this action.

IV. CONCLUSION

For the foregoing reasons, Alliant's motion for attorneys' fees is denied.

IT IS SO ORDERED.

Dated: April 18, 2023



Donna M. Ryu
Chief Magistrate Judge